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C O N F I D E N T I A L SECTION 01 OF 04 THE HAGUE 002581

SIPDIS

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TAGS: [PARM](#) [PREL](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC): SCENESETTER FOR  
THE EIGHTH CONFERENCE OF STATES PARTIES

REF: THE HAGUE 2453

Classified By: Ambassador to the OPCW Eric M. Javits for Reasons 1.5 (B  
, D)

This is CWC-104-03.

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SUMMARY  
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1. (C) The Oct. 20-24 Conference of States Parties will be dominated by discussion of the budget and other financial issues. We have supported the Director-General's request for a 7.36% increase, and share the DG's view that an increase of this magnitude is needed to ensure core functions are adequately financed. However most delegations are not convinced, and as a result, the final budget number will, in all likelihood, be decided at the eleventh hour of the CSP. With regard to the U.S. request for an extension of our 45% destruction deadline, whether the issue takes center stage will depend on what we have convinced the Russians to accept in the run-up to the CSP. While there is still skepticism among many delegations about the U.S. position regarding our 100% destruction deadline, we suspect most delegations will not be more vocal than the Russians. On other action items, there is a reasonable chance that an Article VII action plan for national implementation will be ready for adoption by the Conference, and an outside chance that that may also be the case regarding an action plan on universality. Under industry issues, a decision on Captive Use might also be ready for consideration. Finally, the ILO decision regarding former Director-General Bustani is not on the formal agenda, and there is no indication yet that it will be specifically added. While it could come up as part of "any other business," there is no clear consensus at this point on what action (pay/not pay; appeal/not appeal) member states want to take, and everyone is waiting for the U.S. position on how the organization should respond. In the absence of a clear U.S. policy driving the CSP to a particular outcome, it is likely that the Conference may simply punt on this issue for another year. End Summary.

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OPCW 2004 BUDGET - PAYING FOR CORE FUNCTIONS  
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2. (C) DG Pfirter has proposed a budget increase of 7.36% for 2004, making a strong case that the full amount is needed to ensure that the organization can perform its core functions. While delegations have been willing to consider an increase, 7.36% is far above the increase most delegations currently are willing to accept. The Japanese entered the budget debate pressing for zero nominal growth, and the Western Group is bunched around an increase of some 6%. Amb. Javits has fully supported Pfirter and made the case for the DG's proposal in larger budget discussions as well as in individual meetings with delegations. While there was consideration of holding a special Executive Council meeting to try to hammer out agreement on a budget, the consensus is that there would be little reason to hold such a meeting, and it would be more efficient to have the CSP gather as a special EC at the start of the conference. Even with that step, it is likely that the budget discussions will continue on to the last minute and be decided by attrition.

3. (SBU) The DG has also made a strong case to have more flexibility to pursue efficiencies. While there are concerns about some aspects of the DG's management decisions, such as on travel and use of consultants, there appears to be general agreement on the need to avoid micromanagement by the governing bodies. We support the general approach promoted by the DG to give him added authority to pursue streamlining and reform, while ensuring that he does not have carte blanche. With regard to other key financial issues, the DG, pursuant to suggestions from the U.S., is making a request for retention of the 2001 cash surplus of 3.4 million Euros.

In addition, he has made a separate request to establish a special fund for late receipt of Article IV/V funds in 2004 to be retained for use by the OPCW, rather than have the monies returned to the States Parties.

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U.S. EXTENSION REQUEST  
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14. (C) At EC-34, Russia blocked consideration of the U.S. request for extension of the 45% destruction deadline, and was content to merely provide a list of questions which broke no new ground. While the Russians touched on the issue of what the U.S. intends to do about the 100% destruction deadline in April 2007, they did not conduct a frontal assault on the issue. That was left to other delegations during informal consultations during the September EC. There was eventual agreement on language that would assuage the concerns of Germany, the U.K. and a number of other countries, although this did not eliminate a healthy skepticism about the U.S. approach to addressing the 100% deadline. Whether that skepticism will become manifest at the CSP will likely depend once again on how the Russians wish to play this issue at the Conference. While there is substantial veiled (and sometimes open) off-line criticism about the U.S. reluctance to address the issue of the 100% deadline, members of the Western Group will not be more critical than the Russians on the conference floor.

15. (C) As for Russian attempts to draw parallels between their extension request for the 20% destruction deadline, and the U.S. request, the Western group is solidly opposed to the Russian ploy. And while NAM delegations may well chide the U.S. and Russia on not having met deadlines (while India pointedly noted that it is meeting its obligations on time), this will be more of an irritant than a problem.

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BUSTANI DECISION  
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16. (C) While a number of legal and political arguments have been raised regarding the ILO decision on former DG Bustani, there is no clear consensus among delegations about what action should be taken by the OPCW. All delegations are waiting for the U.S. position on how it wishes the organization to respond, and that will likely serve as the driving force for any decision by the Conference. In the absence of a clear U.S. position, the chances for concrete action at CSP-8 are minimal. The July 29 provisional agenda for the Conference has no specific item regarding Bustani. The detailed agenda will not be provided until next week, and there is as yet no indication of a specific reference to the ILO decision. As a result, the one place where the issue could arise is in the "any other business" category. Whether any delegation wishes to raise it is problematic, as there is no indication that the member states are agreed upon an appropriate response by the OPCW.

17. (C) The general consensus is that the ILO decision is simply wrong, but there is also a strong desire to have the OPCW put this issue behind it and move on. Beyond those general sentiments, positions are divided on the specific issues of 1) payment of the ILO judgment, and 2) appealing the decision. A small number of states have advocated paying the judgment in order to put the issue to rest. Another group wants to pay before taking the steps needed to appeal the ILO decision. What probably comes closest to an amorphous general view is that the organization needs to follow the rule of law, which would entail an appeal directly back to the ILO on the issue of material damage, or to the International Court of Justice via the UNGA on the overall issue of the ILO's jurisdiction in handing down the decision.

18. (C) Under such circumstances, without a U.S. policy driving the discussion, it is unlikely that the CSP would reach agreement on a particular course of action, and will likely defer action on the issue until the next Conference. The OPCW's Rule 69 states that on a matter of substance, a decision should be taken by consensus. If consensus is not attainable when the matter comes up for decision, there is a mandatory 24-hour deferment during which the presiding officer must seek to achieve a consensus. If there is still no consensus, the decision requires a two-thirds majority of members present and voting. Rule 71 clarifies that "present and voting" means casting a valid affirmative or negative vote. Members who abstain from voting shall be regarded as not voting.

19. (C) With the Bustani issue so contentious, it is very likely that many delegations will simply abstain. As a result, the number of countries required to block such a decision (one-third plus one), is potentially very small. Moreover, in the event that a two-thirds majority could be found to pay the judgment, the Technical Secretariat has informed us there is no amount set aside in the budget for

such a payment. As a result, there may be recourse to a voluntary fund to pay the judgment. However, supporters of Bustani may balk at pursuing such a course, as there is the risk of an embarrassing response to any request for funds to pay the former DG. As a result, in the absence of a clear decision supported by the U.S., the likely result may well be statements from the floor on the ILO decision, but a deferral of action until the next CSP.

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ACTION PLAN ON NATIONAL IMPLEMENTATION  
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110. (SBU) The Article VII facilitator (Mark Matthews/U.K.) has done yeoman's work in pushing for an action plan on national implementation, and it will not be clear until the end of the week whether he has managed to achieve consensus. The final remaining issue involves acceptable language regarding measures to ensure compliance from countries that do not meet the agreed-upon timetable. DG Pfirter will be chairing a small meeting of key countries (U.S., U.K., Iran and India) to see if agreement can be reached on acceptable wording on that point. In every other respect, the draft text meets the goals set out by the U.S., in particular, containing language that marks CSP-10 as the timetable for meeting obligations.

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ACTION PLAN ON UNIVERSALITY  
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111. (U) Here again, the facilitator (Consuelo Femenia/Spain) has made substantial progress, and there is an outside chance that consensus will be reached on an action plan by CSP-8. There is general support for the TS to drive the process and use voluntary regional and sub-regional points of contact to push the initiative. Delegations are split on the issue of whether to state that some non-States Parties are of more concern than others. In addition, there remains substantial opposition among NAM and other delegations for numerical targets. Despite these divisions, the facilitator is pushing ahead with consultations to find acceptable wording, and with the onset of the CSP as a firm deadline, there are reasonable prospects for consensus.

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ARTICLE XI  
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112. (SBU) Iran and others have sought to use work on fostering international cooperation for peaceful purposes as the vehicle to launch an attack on the Australia Group and establish a cooperation committee for consultations for promoting Article XI implementation among States Parties. While the Facilitator (Norma Suarez/Mexico) has sought to find a paper that will be an acceptable point of departure for the Western Group, she has not yet been successful. The issue should not be ripe for discussion at the CSP, although there may be some shots fired by the Iranians and others.

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CHALLENGE INSPECTIONS  
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113. (C) The issue of challenge inspections may come up in side-bar discussions. During EC-34, the EU statement, read by the Italian representative, made reference to the issue of challenge inspections and to the European desire to see progress made on this front. While there is no specific item on the CSP agenda that would allow for a decision of any type regarding challenge inspections, the Europeans may elect to return to the topic during informal talks.

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INDUSTRY ISSUES  
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114. (SBU) The facilitator for "Captive Use" appears ready to push for a decision at a Special EC Session in hopes of adopting the decision at CSP-8. A revised text, which accommodates Indian concerns, is being circulated by the facilitator and should achieve broad support. However, we understand Germany may still have reservations about any "Captive Use" decision that does not apply equally to Schedule 1 and Schedule 2 and 3 chemicals. The decision, as written, is in accordance with U.S. guidance.

115. (U) Javits sends.  
SOBEL